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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

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Technology Center 2600

Application Number: 09/752,700

Filing Date: December 29, 2000

Appellant(s): STUART, ANTHONY EDWARD

Reitseng Lin
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 12, appealing from the Office action mailed July 11, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,731,844

Rauch et al.

March 24, 1998

2005/0229215	Schein et al.	October 13, 2005
6,867,764	Ludtke	March 15, 2005
6,664,984	Schlarb et al.	December 16, 2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

A. The rejection of claims 1-5, 8-15 and 18-21 under 35 U.S.C. § 103(a) based on U.S. Patent No. 5,731,844 to Rauch et al. ("Rauch") in view of U.S. Patent Application Publication No. 2005/0229215 by Schein et al. ("Schein") and further in view of U.S. Patent No. 6,867,764 to Ludtke ("Ludtke").

As to claim 1, note the Rauch et al. reference that discloses a scroll bar 224 for rapidly advancing a program guide as illustrated in Figure 2.

The claimed "enabling a display on a display device, wherein the display includes a time line" is met by "[a] screen display is shown in FIG. 2 which is displayed by the television 130 under control of the selection program 152 when the user requests a schedule... [t]he screen display includes a schedule layout 200" (Rauch 5:47-49), "[t]he schedule layout 200 includes a time scroll bar 224 which the user scrolls to select time entries 215 that are different than the time entries currently displayed on the time axis 214 of the grid 210" (Rauch 7:1-4).

The claimed "enabling the user to move the marker" is met by "input device 120 is a mouse, a remote control pointing device, or the like" (Rauch 4:43-45) and "the contents of the grid [(time/channel)] may be manipulated by directional buttons provided on the input device 120" (Rauch 7:21-23) wherein the time scroll bar includes a marker as illustrated in Figure 2. Note, the Rauch et al. reference discloses the availability of multiple days of program information for display to users wherein "[t]he schedule layout 200 also includes a day selector 220 with which the user selects the day for which the television programs are to be displayed by the grid 210 (Rauch 6:58-60). The Rauch et al. reference discloses that "[t]he day selector 220 contains arrow button with which the user moves the selected day chronologically forward or backward" (Rauch 6:60-64) and "a time scroll bar 224 which the user scrolls to select time entries 215 that are different than the time entries currently displayed on the time axis 214 of the grid 210. Thus the Rauch et al. reference discloses a day selector 220 for conveniently viewing the program schedule for the same time on different days. However, the Rauch et al. reference does not specifically disclose the time period the time scroll bar 224 encompasses, i.e. the system response to transitions between different days.

Now note the Schein et al. reference that discloses an interactive computer system for providing television schedule information wherein the

viewer can scroll to move forward and backward in time (Schein [0083]) and the user can use the scroll bar to transition between different times and days as illustrated in Figure 12B, illustrating a transition between days (10:00 pm and 12:00 am). Further note, the Schein reference teaches that the scroll bar is visually proportional to the total information in the program matrix 706 (Schein [0080]) and that the visually proportional scroll bar is equally applicable to timing information (Schein, [0083]). Thus the Schein et al. reference discloses a scroll bar for scrolling through time slots within a time period comprising a plurality of days, meeting the claimed "times and days in the future from a current day and time to which a marker can be moved." Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rauch et al. time scroll bar for scrolling through available time entries with the Schein et al. scroll bar for scrolling through program information for multiple days and times for the purpose of allowing the system users to navigate the program in an intuitive matter, chronologically, in order to minimize the need for users to learn a new control interface thus generate greater revenue by increasing the number of users of the device.

Note the Rauch et al. and Schein et al. combination discloses a time line representing discrete predefined time slots thereon delineating times

and days in the future from a current day and time to which a marker can be moved as discussed above.

However, the Rauch et al. and Schein et al. combination is silent as to a time line having notches. Now note the Ludtke reference that discloses "[r]egardless of the mode, it is preferable for the slider to provide some indexing marks or other graphical information to indicate to the user what type of data will be entered as the slider is manipulated" (Ludtke 4:47-50) wherein the indexing marks should be representative of value type used, such as numbers for currency values (Ludtke 4:51-58). Thus the Ludtke reference clearly teaches the use of indexing marks (notches) on a slider. Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rauch et al. and Schein et al. combination with the Ludtke indexing marks "to indicate to the user what type of data will be entered as the slider is manipulated" (Ludtke, 4:48-50).

Note the claimed "having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved" is met by the Rauch et al., Schein et al., and Ludtke combination as discussed above wherein the appropriate indexing marks would comprise time and days.

The claimed "to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in a time window displayed on the display device a time period displaying indicia for programs to be broadcast during the time period on said desired day and time" is met by the Rauch et al., Schein et al., and Ludtke combination wherein "[t]he schedule layout 200 includes a time scroll bar 224 which the user scrolls to select time entries 215 that are different than the time entries currently displayed on the time axis 214 of the grid 210" (Rauch 7:1-4) wherein the time scroll bar includes information for a plurality days and notches representing the times and days to indicate the time/day that will be entered as the slider is manipulated.

As to claim 2, the claimed "wherein the notches delineate times that are hours, days, weeks or months in the future from the current day and time," please see rejection of claim 1.

As to claim 3, the claimed "further comprising the step of moving the time window to view desired program indicia" is met by "by manipulating the time scroll bar 224 and the channel scroll bar 226, the user varies the content of the displayed portion of the grid 210 shown in the schedule layout 200" (Rauch 7:18-21).

As to claim 4, the claimed "further comprising the step of moving the time window in on-half hour increments" is met by "time scroll bar 224 which the user scrolls to select time entries 215 that are different than the time entries currently displayed on the time axis 214 of the grid 210" (Rauch 7:1-4) wherein the timeslots are divided into half-hour increments (Rauch 7:8-9), also see Figure 2.

As to claim 5, the claimed "wherein the marker can be selectively moved forward and backward in time" is met by the time scroll bar comprising left arrow (backwards in time) and right arrow (forwards in time), as illustrated in Figure 2 (Rauch), for moving forward and backward in time.

As to claim 8, note the Rauch et al. reference that discloses a scroll bar 224 for rapidly advancing a program guide as illustrated in Figure 2.

The claimed "enabling a display on a display device, wherein the display includes a time line" is met by "[a] screen display is shown in FIG. 2 which is displayed by the television 130 under control of the selection program 152 when the user requests a schedule... [t]he screen display includes a schedule layout 200" (Rauch 5:47-49), "[t]he schedule layout 200 includes a time scroll bar 224 which the user scrolls to select time entries 215 that are different than the time entries currently displayed on the time axis 214 of the grid 210"

(Rauch 7:1-4). The claimed "enabling a user to move the marker" is met by "input device 120 is a mouse, a remote control pointing device, or the like" (Rauch 4:43-45) and "the contents of the grid [(time/channel)] may be manipulated by directional buttons provided on the input device 120" (Rauch 7:21-23) wherein the time scroll bar includes a marker as illustrated in Figure 2. Note, the Rauch et al. reference discloses the availability of multiple days of program information for display to users wherein "[t]he schedule layout 200 also includes a day selector 220 with which the user selects the day for which the television programs are to be displayed by the grid 210 (Rauch 6:58-60). The Rauch et al. reference discloses that "[t]he day selector 220 contains arrow button with which the user moves the selected day chronologically forward or backward" (Rauch 6:60-64) and "a time scroll bar 224 which the user scrolls to select time entries 215 that are different than the time entries currently displayed on the time axis 214 of the grid 210. Thus the Rauch et al. reference discloses a day selector 220 for conveniently viewing the program schedule for the same time on different days. However, the Rauch et al. reference does not specifically disclose the time period the time scroll bar 224 encompasses, i.e. the system response to transitions between different days.

Now note the Schein et al. reference that discloses an interactive computer system for providing television schedule information wherein

the viewer can scroll to move forward and backward in time (Schein [0083]) and the user can use the scroll bar to transition between different times and days as illustrated in Figure 12B, illustrating a transition between days (10:00 pm and 12:00 am). Further note, the Schein reference teaches that the scroll bar is visually proportional to the total information in the program matrix 706 (Schein [0080]) and that the visually proportional scroll bar is equally applicable to timing information (Schein [0083]). Thus the Schein et al. reference discloses a scroll bar for scrolling through time slots within a time period comprising a plurality of days, meeting the claimed "times and days in the future from a current day and time to which a marker can be moved." Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rauch et al. time scroll bar for scrolling through available time entries with the Schein et al. scroll bar for scrolling through program information for multiple days and times for the purpose of allowing the system users to navigate the program in an intuitive matter, chronologically, in order to minimize the need for users to learn a new control interface thus generate greater revenue by increasing the number of users of the device.

Note the Rauch et al. and Schein et al. combination discloses a time line representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved as discussed above.

However, the Rauch et al. and Schein et al. combination is silent as to a time line having notches. Now note the Ludtke reference that discloses "[r]egardless of the mode, it is preferable for the slider to provide some indexing marks or other graphical information to indicate to the user what type of data will be entered as the slider is manipulated" (Ludtke 4:47-50) wherein the indexing marks should be representative of value type used, such as numbers for currency values (Ludtke 4:51-58). Thus the Ludtke reference clearly teaches the use of indexing marks (notches) on a slider. Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rauch et al. and Schein et al. combination with the Ludtke indexing marks "to indicate to the user what type of data will be entered as the slider is manipulated" (Ludtke 4:48-50).

Note the claimed "having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved" is met by the Rauch et al., Schein,

et al., and Ludtke combination as discussed above wherein the appropriate indexing marks would comprise time and days.

The claimed "enabling the display to further include a time window defining a first time period on the current day, wherein the time window displays indicia for programs broadcast during the first time period of the current day" is met by the schedule layout 200 for displaying program schedule information for a plurality of days including the current day (Rauch 5:47-67).

The claimed "enabling a user to move the marker to one of the notches delineating a desired day and time in the future, thereby causing to be displayed in the time window a second time period displaying indicia for programs to be broadcast during the second time period on said desired day and time" is met by the Rauch et al., Schein et al., and Ludtke combination wherein "[t]he schedule layout 200 includes a time scroll bar 224 which the user scrolls to select time entries 215 that are different than the time entries currently displayed on the time axis 214 of the grid 210" (Rauch 7:1-4) wherein the time scroll bar includes information for a plurality days and notches representing the times and days to indicate the time/day that will be entered as the slider is manipulated.

As to claim 9, the claimed "wherein the second time period is for a period of time on a different day than the first time period" is met by Rauch et al., Schein et al., and Ludtke combination as discussed above wherein the user may use the time scroll bar to access program information for a different day.

As to claim 10, the claimed "wherein the second time period overlaps the first time period" is met by the Rauch et al., Schein et al., and Ludtke combination, as discussed in the rejection of claim 8, teaching a time line comprising days and time to move in the various time slots in the grid wherein the time slots are divided into 30 minute increments as illustrated in Figure 2 (Rauch). Note that by incrementing the time frame by 30 minutes, the new time frame overlaps the previous time frame. As to claim 11, the claimed "wherein the first and second time periods are successive time periods" is met by that discussed in the rejection of claim 8 wherein a user may access any time frame of program guide information which inherently includes successive time periods. As to claims 12-15, please see rejections of claims 1-2 and 4-5 respectively. As to claims 18-21, please see rejections of claims 8-11 respectively.

B. The rejection of claims 6 and 16 under 35 U.S.C. § 103(a) based on Rausch in view of Schein and further in view of U.S. Patent No. 6,664,984 to Schlarb et al. ("Schlarb").

As to claim 6, the claimed "wherein the marker can be selectively moved backwards in time to display indicia for programs that were already broadcast." Note the Rauch et al. reference teaches selectively moving the marker backwards to display programming. However, the Rausch and Schein et al. combination does not specifically disclose "wherein the marker can be selectively moved backwards in time to display indicia for programs that were already broadcast." Now note the Schlarb et al. reference that discloses a method and system for identification of pay-per-view programming. The claimed "wherein the marker can be selectively moved backwards in time to display indicia for programs that were already broadcast" is met by "[t]he subscriber, depending on the television system, can scroll up or down through the hundreds of channels and forwards or backwards through several days or weeks of program information" (Schlarb 1:59-65). Therefore, the examiner submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Rauch et al. backwards navigation with the Schlarb et al. navigating backwards

through several days or weeks of program information for the purpose of providing a user the option to verify whether he/she had missed any programming and/or to determine missed programming that he/she may want to locate a repeat showing at a later time.

As to claim 16, please see rejection of claim 6.

(10) Response to Argument

A. Patentability of Claims 1-5, 8-15 and 18-21

Appellant's arguments:

One of ordinary skill in the art would have absolutely no motivation to combine the cited references in the manner proposed by the Examiner since the primary reference, Rausch, alone provides a complete solution for allowing users to scroll through program information for multiple days and times in an intuitive manner, albeit a different solution than that provided by the claimed invention. As such, the rejection of claims 1-5, 8-15 and 18-21 is the result of impermissible hindsight reconstruction and the selective picking and choosing elements of the prior art in an attempt to deprecate the claimed invention.

As indicated above, independent claims 1, 8, 12 and 18 define a method and apparatus for providing an electronic program guide. The electronic program guide includes a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved. The marker can be moved to a notch using navigation buttons of a remote control device delineating a desired day and time in the future, thereby causing to be displayed in a time window a time period displaying indicia for programs to be broadcast during the time period on the desired day and time.

In formulating the proposed combination, the Examiner relies on FIG. 2 of Rausch for disclosing a time scroll bar 224 for rapidly advancing a program guide. The program guide is made up of a schedule layout 200 including the time scroll bar 224 which a user can scroll to select time entries 215 that are different than the time entries displayed on a time axis 214 of a grid 210 (see FIG. 2 and column 7, lines 1-4). Schedule layout 200 also includes a day selector 220 with arrow buttons which a user can move a selected day chronologically forward or backward (see FIG. 2 and column 6, lines 60-64). In the aforementioned manner, Rausch provides a complete solution for allowing users to scroll through program information for

multiple days and times in an intuitive manner, albeit a **different solution** than that provided by the claimed invention.

The Examiner admits, however, that Rausch fails to disclose, *inter alia*, "the time period the scroll bar 224 encompasses, i.e., the system response to transitions 0 between different days" (see page 3 of final Office Action dated July 11, 2006), and relies on Schein for this element. In particular, the Examiner proposes modifying "the Rausch et al. time scroll bar for scrolling through available time entries with the Schein et al. scroll bar for scrolling through program information for multiple days and times for the purpose of allowing the system users to navigate the program [sic, guide] in an intuitive manner" (see page 4 of final Office Action dated July 11, 2006). However, one of ordinary skill in the art would have absolutely no motivation to modify the time scroll bar 224 of Rausch using the teachings of Schein since Rausch already provides a **complete solution** for allowing users to scroll through program information for multiple days and times in an intuitive manner (albeit a **different solution** than that provided by the claimed invention).

The fact that the Examiner attempts to modify a reference that already provides a complete solution to a problem strongly suggests that the proposed combination is the product of impermissible hindsight reconstruction. Appellant notes that "(o)ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Moreover, "[i]t is impermissible . . . to engage in hindsight reconstruction of the claimed invention, using the applicant's structure as a template and selecting elements from references to fill the gaps." In re Gorman, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). In this case, the fact that the Examiner relies on Schein even when Bausch provides a **complete solution** for allowing users to scroll through program information for multiple days and times in an intuitive manner strongly suggests that the proposed combination is the product of impermissible hindsight reconstruction. For this reason alone, the rejection of claims 1-5, 8-15 and 18-21 should be reversed.

Even if the cited references were properly combinable (which they are not), the references, whether taken individually or in combination, fail to teach or suggest all elements of the claimed invention.

It is again noted that independent claims 1, 8, 12 and 18 include:

"enabling a display on a display device, wherein the display includes a **time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time** to which a marker can be moved" (emphasis added; see claim 1),

"enabling a display on a display device, wherein the display includes a **time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time** to which a marker can be moved" (emphasis added; see claim B)

"a device for enabling a display including a **time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time**" (emphasis added; see claim 12), and

"a device for enabling a display including a **time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time** to which a marker can be moved" (emphasis added; see claim 18).

As indicated above, independent claims 1, 8, 12 and 18 each include "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time." None of the references, whether taken individually or in combination, teach or suggest, *inter alia*, this element of the claimed Invention.

On pages 3 and 4 of the final Office Action dated July 11, 2006, the Examiner admits that Rauch fails to disclose the time period encompassed by its time scroll bar 224, and relies on Schein for allegedly curing this deficiency. In particular, the Examiner states:

"However, the Rausch et al. reference does not specifically disclose the time period the time scroll bar 224 encompasses, i.e., the system response to transitions between days.

Now note the Schein et al. reference that discloses an interactive computer system for providing television schedule information wherein the viewer can scroll to move forward and backward in time (Schein [0083]) and the user can use the scroll bar to transition between different times and days as illustrated in Figure 12B, illustrating a transition between days (10:00 pm and 12:00 am). Further note, the Schein reference teaches that the scroll bar is visually proportional to the total information in the program matrix 706 (Schein [0080]) and that the visually proportional scroll bar is equally applicable to timing information (Schein [0083]). **Thus the Schein et al. reference discloses a scroll bar for scrolling through time slots within a time period comprising a plurality of days, meeting the claimed 'times and days in the future from a current day and time to which a marker can be moved.'**" (emphasis added)

As indicated above, the Examiner relies on paragraphs [0080] and [0083] and FIG. 12B of Schein for allegedly disclosing a time line having time slots for multiple times and days in the future from a current day and time. However, the cited portions of Schein fail to teach or suggest this element. In particular, FIG. 12B of Schein discloses a channel guide 704 having a scroll bar 720 which "may be used for large-scale movement through hundreds of channels/sources by navigating to bar 720 and then vertically moving bar 720" (see FIGS. 12A-12B, and paragraphs [0080] and [0083]): However, nowhere does Schein teach or suggest that channel guide 704 includes "a time line ... delineating times and days [plural emphasized] in the future from a current day and time" as claimed. In other words, channel guide 704 shown in FIG. 12B of Schein is capable of displaying program information for a time period covering portions of two days at the most (e.g., from 3:30 PM to 7:00 AM in FIG. 12B). In contrast, the claimed "time line" covers portions of at least three days (i.e.,

"a current day" plus "days [plural] in the future" from the "current day"). Accordingly, the proposed combination including the teachings of Schein fails to teach or suggest all elements of the claimed invention.

The Ludtke reference is unable to remedy the deficiencies of the Rausch and Schein combination pointed out above. In particular, the Ludtke reference discloses a data entry user interface for devices such as personal digital assistants (PDAs). Ludtke fails to teach or suggest, *inter alia*, a method or apparatus for providing an electronic program guide" including "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time" as claimed. Accordingly, Appellants respectfully request that the Board reverse the rejection of claims 1-5, 8-15 and 18-21 under 35 U.S.C. §103(a).

Examiner's response:

a. In response to Appellant's arguments that the fact that the Examiner relies on Schein even when Rausch provides a **complete solution** for allowing users to scroll through program information for multiple days and times in an intuitive manner, albeit a **different solution** than that provided by the claimed invention, strongly suggests that the proposed combination is the product of impermissible hindsight reconstruction and for this reason alone the rejection of claims 1-5, 8-15 and 18-21 should be reversed, the Office notes the following:

- i. Rausch, while providing a more efficient means of TV program selection (2:14-15) with the use of the time scroll bar 224 (see FIG. 2) which the user scrolls to select time entries 215 that are different than the time entries

currently displayed on the time axis 214 (7:1-4), the day selector 220 with which the user selects the day for which the TV programs are to be displayed by the grid (6:58-60), does not provide a time line as claimed, i.e., *a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time to which a marker can be moved.* Therefore, it cannot be said that Rausch provides a complete solution, albeit a different solution than that provided by the claimed invention.

ii. in response to Appellant's argument that the proposed combination Rasch-Schein is the product of impermissible hindsight reconstruction, it should be noted that *In re Fulton*, 391F3.d 1195, 73 USPQ2d 1141 (Fed. Cir. 2004), the Court emphasized that the proper inquiry is "whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness of making the combination, not whether there is something in the prior art as a whole to suggest that the combination is the most desirable combination available." *Id.*

In this case, the desirability is to provide a user with efficient means to view and/or record TV programs that will be broadcast at a time and day in the future (Rausch's day selector), thereby allowing the system user to navigate the program in an intuitive manner by minimizing the need for the system user to learn a new control interface. This efficient means to view and/or record television programs will therefore generate greater revenue by increasing the number of users of the device.

The combination of Rausch and Schein appears to provide a means to fulfill the above desirability. Therefore, the motivation to combine Rausch with Schein is not a product of impermissible hindsight reconstruction as submitted by Appellant.

- b. Appellant further submitted that nowhere does Schein teach or suggest that channel guide 704 includes "a time line ... delineating times and days (plural emphasized by Appellant) in the future from a current day and time" as claimed. Appellant further submitted that channel guide 704 shown in FIG. 12B of Schein is capable of displaying program information for a time

period covering portions of two days at the most (e.g., from 3:30

PM to 7:00 PM in FIG. 12B) and that in contrast, the claimed

“time line” covers portions of at least three days (i.e., “a current

day” plus “days [plural] in the future” from the “current day”).

Accordingly, Appellant submitted that the proposed combination

including the teaching of Schein fails to teach or suggest all

elements of the claimed invention.

In response to Appellant’s argument that Schein fails to show certain features of Appellant’s invention, it is noted that the features upon which applicant relies (i.e., time line covers portions of at least three days, i.e., a current day plus days in the future from the current day) are not explicitly recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Furthermore, it is noted that Appellant’s claims recite the step of “*enabling* a display ... where a display includes a time line...” Enabling is interpreted to mean providing with the means or making possible (Webster’s New Collegiate Dictionary).

According to this definition, Rausch and Schein in combination do provide the means of displaying a time line. The claims do not however explicitly recite *displaying* the time line as required by the claims and are considered to read on the prior art of record.

Additionally, the examiner notes that “enabling a display ..., wherein the display includes a time line having notches representing discrete predefined time slots thereon delineating times and days in the future” can be reasonably construed as “enabling a display..., wherein the display includes a time line, the time line having notches representing ... times and days,” which does not positively recite concurrently displaying times and days of the time line, as argued.

As such, the claim merely requires the existence of “a time line having notches representing discrete predefined time slots thereon delineating times and days in the future,” but does not unequivocally capture concurrently displaying times and days in the future, such as shown in figures 4 and 5 of the appellant’s specification. Since the claims do not require this interpretation, the reference merely needs to show the existence of a time line,

which is taught by Schein (see figure 12B, and the database having weeks/months of data – pg. 1, para 0006, ll. 19-23).

c. Appellant further argued that the Ludtke reference is unable to remedy deficiencies of the Rausch-Schein combination and fails to teach or suggest a method or apparatus “for providing an electronic program guide” including “a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time” as claimed.

In response to Appellant’s arguments, it is noted that while Ludtke fails to teach a method or apparatus for providing an electronic program guide, Ludtke is considered reasonably pertinent to the particular problem with which the applicant was concerned, which is to use of indexing marks (notches) on a slider (Ludtke 4:47-58; e.g., because the contents of the slider data is tailored to the nature of the field being manipulated, the indexing marks can thus be made to display times and dates) in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

B. Patentability of Claims 6 and 16

Appellant's arguments:

Claims 6 and 16 are allowable under 35 U.S.C. §103(a) over Rausch in view of Schein and Schlarb for at least the same reasons stated above in conjunction with claims 1-5, 8-15 and 18-21 since: (i) the Rausch/Schein combination is improper as being the product of impermissible hindsight reconstruction, and (ii) even if Rausch and Schein were properly combinable (which they are not), Schlarb fails to remedy the deficiencies of the Rausch/Schein combination.

In particular, Schlarb discloses a method and system for the identification of pay-per-view programming which enables users to scroll through program information in a manner similar to Rausch and Schein. Schlarb fails to teach or suggest, *inter alia*, "a time line having notches representing discrete predefined time slots thereon delineating times and days in the future from a current day and time" as claimed. In view of the foregoing arguments and remarks, Appellants respectfully request the Board to reverse the rejection of claims 6 and 16 under 35 U.S.C. § 103(a).

Examiner's response:

In response to Appellant's arguments that the Rausch-Schein combination is improper as being the product of impermissible hindsight reconstruction, Appellant's attention is respectfully directed to the examiner's response set forth above.

In response to Appellant's argument that even if Rausch and Schein were properly combinable, Schlarb fails to remedy the deficiencies of the Rausch/Schein combination because Schlarb fails in particular to teach/suggest "a time line having notches representing

discrete predefined time slots thereon delineating times and days in the future from a current day and time" as claimed, it is noted that Schlarb, an analogous art, is used to modify Rausch's backwards navigation so that the combination could enable navigating backwards through several days or weeks of program information for the purpose of providing a user the option to verify whether he/she had missed any programming and/or to determine missed programming that he/she may want to locate a repeat showing at a later time, thereby fulfilling the user's desire to have an efficient means to view and/or record TV programs.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Hoang-Vu Antony Nguyen-Ba, Primary Examiner AU 2623

June 15, 2007

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